

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5399 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PREMABHAI HAMIRBHAI ROHIT

Versus

COMMANDANT, STATE RESERVED POLICE GROUP NO.1 & ORS.

Appearance:

MR GM JOSHI for Petitioner

MR DA BAMBHANIA for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/08/97

ORAL JUDGMENT

#. The petitioner, an armed police constable of the State Reserve Police Force Group I, State of Gujarat, filed this Special Civil Application before this Court against the order dated 13th February 1992 under which he was ordered to be removed from service.

#. The petitioner was ordered to be removed from services after the charges framed against him in the

departmental inquiry, vide chargesheet dated 13th September 1990 were found proved. The order of dismissal dated 13th February 1992 was confirmed by the appellate authority under its order dated 22nd July 1992. The charges which have been framed against the petitioner have been reproduced in para-2 of the Special Civil Application.

#. The only contention raised by learned counsel for the petitioner is that the charges levelled against the petitioner are not of very serious nature and as such, the penalty of removal from services is highly excessive, harsh and disproportionate to the guilt proved. It has further been contended that the appellate authority, while dealing with the appeal has not considered the question of quantum of punishment in an objective way. This important aspect has been taken to be of only subjective consideration. It has next been contended by Mr. Joshi, learned counsel for the petitioner, that the power of judicial review of this Court under Article 226 or 227 of the Constitution of India in the matter of quantum of punishment is very very limited and as such, the appellate authority should have been more cautious and careful while dealing with the question of quantum of punishment to be given to a delinquent employee which has not been done in the present case.

#. On the other hand, the learned counsel for respondent, Mr. D.A. Bambhania, with all vehemence, contended that the charges against the petitioner are of very serious nature. The petitioner has remained absent from his duty on 22.5.90. He was posted for very very important duty, i.e. on a communal and sensitive point of Nizamwadi in Bharuch city and he had taken that duty very casually and lightly. The petitioner was an armed constable in the State Reserve Police Force and as such discipline should have been of utmost importance and consideration for him. When the petitioner kept himself away from the said point for more than five hours without any intimation to his superior officers and without grant of permission, then certainly the matter should have been taken seriously and both the authorities have not committed any error if they have taken it to be serious matter and rightly the penalty of removal has been given to the petitioner. The charge No.1 is also equally serious. The petitioner cannot take liberty to raise false complaint and allegation against the superior officer. The petitioner may be a person belonging to backward class Harijan community, but for this reason he is not at liberty to raise false and frivolous allegations against the superior officers which he did.

So the charges are very serious and the minimum penalty for the same could have been and should have been only of dismissal, but lighter punishment has been given of removal.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. After hearing the learned counsel for the parties, I am satisfied that the appellate authority was not mindful of the decision of Hon'ble Supreme Court where it has been laid down that this Court, sitting under Article 226 or 227 of the Constitution of India has very very limited power of judicial review in the matter of quantum of punishment. In disciplinary matters, against the orders passed by the disciplinary authority or the appellate authority or revisional authority, no further remedy of appeal or revision has been provided to this court. So the orders passed by the appellate authorities in disciplinary matters are final. However, this Court, under Article 226 of the Constitution of India or under Article 227 thereof, has judicial power of review, but so far as the quantum of punishment to be given to a delinquent employee is concerned, it is exclusively in the domain of disciplinary authority or the appellate authority. This Court can interfere in the matter of quantum of punishment only where the punishment is found to be touching the judicial conscious of the Court. However, the powers of the appellate authority are wider and in fact coextensive to the powers of disciplinary authority. The appellate authority, should have gone on the question of quantum of punishment objectively and as rightly contended by Mr.Joshi, learned counsel for the petitioner, that in view of the latest trend of Judgments of the Hon'ble Supreme Court, much more care and caution should have been taken by the appellate authority while dealing with the question of quantum of punishment to be given to the delinquent employee for proved misconduct. An objective approach has to be made and not only subjective satisfaction has to be recorded, which has been done in the present case. After going through the judgment of the appellate authority, I am satisfied that the authority has acted very casually and taken the matter only for subjective satisfaction. Reasons were not given for taking the view that no interference is called for in the quantum of punishment given to the petitioner by the disciplinary authority. The appellate authority should have given some justified reasons, except to state that looking to the seriousness of charges, no interference is called for in the punishment. During the course of arguments, Mr.Bambhanian, learned

counsel for the respondent has given out that the petitioner has a right of revision to the State Government also which remedy he has not availed of. The learned counsel for the petitioner accepts this position. So, it will be in the fitness of the facts of this case as well as interest of justice will be met in case this petition is disposed of with direction to the petitioner that he may file a revision application to the State Government in the matter, i.e. against the order of appellate authority as well as disciplinary authority. The petitioner, if he so desire, may file such revision application to the State Government within a period of one month from the date of receipt of certified copy of this order and the State Government shall decide the same on merits on the question of quantum of punishment. However, in view of the fact that this petition has only been confined to the question of quantum of punishment to be given, the State government shall restrict its consideration only on this question. In case the State Government decides the matter against the petitioner, it is expected of it to pass a reasoned order. In case the revision application is not filed within the aforesaid period, the Special Civil Application shall stand dismissed automatically.

#. In the result, this Special Civil Application and the Rule therein stand disposed of in aforesaid terms with no order as to costs.

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